



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO- 172673

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**PRELIMINARY RECITALS**

On March 9, 2016, the above petitioner filed a Hearing request, under Wis. Admin. Code § HA 3.03, to challenge a decision by the Portage County Department of Human Services ["County"] regarding Child Care ["CC"]. The Hearing was held via telephone from Madison, Wisconsin on May 24, 2016. At petitioner's request Hearings scheduled for April 26, 2016 and March 29, 2016 were rescheduled.

The issue for determination is whether it was correct to establish the following Claim against petitioner for overpayments of CC: Claim Number [REDACTED] June 1, 2014 to August 31, 2014; \$561.45.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families

[REDACTED], Benefit Recovery Specialist  
Portage County Department of Human  
Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Sean Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County, Wisconsin.

2. The County established the following Claim against petitioner for overpayments of CC: Claim Number [REDACTED] June 1, 2014 to August 31, 2014; \$561.45. Exhibit A.
3. The Overpayment listed in *Findings of Fact* #2, above, was caused because not all of petitioner's income was budgeted when figuring her eligibility for CC for the time period in question; if all of petitioner's income has been budgeted she would owed CC payments for June 2014 and July 2014 and would not have been eligible for August 2014. Exhibits A.

### **DISCUSSION**

The County or agency must determine whether an overpayment of CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2013-14); See also, Wis. Admin. Code §§ DCF 101.23 (October 2015) & 201.04(5)(a) (March 2016); *Wisconsin Shares Child Care Assistance Manual* ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1 & 2.5.1.2. A CC overpayment is any CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1. & 2.1.5.2.

Petitioner disputes only the August 2014 portion of the overpayment which is \$475.00. She argues that she was only a little over the CC income over limit for that month (she was over the CC income limit by \$22.46 for August 2014), that August 2014 was a 3-pay period month, and that she also took 16 hours of paid time off that month. However, gross income is used for CC eligibly purposes. Wis. Stat. § 49.155(1m)(c)1. (2013-14). With certain exceptions not applicable here, all available earned and unearned income for the child care Assistance Group is counted in the child care budget. Income is available if the individual has a legal interest in it and has the legal ability to make it available for support and maintenance. Income is presumed to be available, unless proven unavailable. *Wisconsin Shares Child Care Subsidy Policy Manual* (November 2015) ["CC Manual"] 1.5.1. & 1.5.2., 1.5.3., 1.5.4 & 1.5.5. Therefore, the County was correct to count all of petitioner's August 2014 income.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to establish the following Claim against petitioner for overpayments of CC: Claim Number [REDACTED] June 1, 2014 to August 31, 2014; \$561.45.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

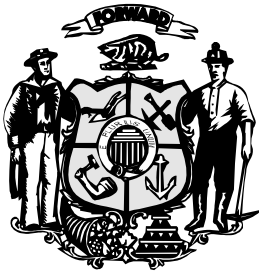
## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of 2016

\s\_\_\_\_\_  
Sean Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 5, 2016.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud